

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 864**

Introduced by Langemeier, 23.

Read first time January 11, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to the Tax Equalization and Review Commission;  
2 to amend section 77-5016, Revised Statutes Supplement,  
3 2007; to change the standard of review for appeals; and  
4 to repeal the original section.  
5 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 77-5016, Revised Statutes Supplement,  
2 2007, is amended to read:

3           77-5016 Any hearing or proceeding of the commission shall  
4 be conducted as an informal hearing unless a formal hearing is  
5 granted as determined by the commission according to its rules and  
6 regulations. In any hearing or proceeding heard by the commission  
7 or a panel of commissioners:

8           (1) The commission may admit and give probative  
9 effect to evidence which possesses probative value commonly  
10 accepted by reasonably prudent persons in the conduct of their  
11 affairs excluding incompetent, irrelevant, immaterial, and unduly  
12 repetitious evidence and shall give effect to the privilege rules  
13 of evidence in sections 27-501 to 27-513 but shall not otherwise  
14 be bound by the usual common-law or statutory rules of evidence  
15 except during a formal hearing. Any party to an appeal filed  
16 under section 77-5007 may request a formal hearing by delivering a  
17 written request to the commission not more than thirty days after  
18 the appeal is filed. The requesting party shall be liable for the  
19 payment of fees and costs of a court reporter pending a final  
20 decision. The commission shall be bound by the rules of evidence  
21 applicable in district court in any formal hearing held by the  
22 commission. Fees and costs of a court reporter shall be paid by the  
23 party or parties against whom a final decision is rendered, and all  
24 other costs shall be allocated as the commission may determine;

25           (2) The commission may administer oaths, issue subpoenas,

1 and compel the attendance of witnesses and the production of  
2 any papers, books, accounts, documents, statistical analysis, and  
3 testimony. The commission may adopt and promulgate necessary rules  
4 for discovery which are consistent with the rules adopted by the  
5 Supreme Court pursuant to section 25-1273.01;

6           (3) The commission may consider and utilize the  
7 provisions of the Constitution of the United States, the  
8 Constitution of Nebraska, the laws of the United States, the  
9 laws of Nebraska, the Code of Federal Regulations, the Nebraska  
10 Administrative Code, any decision of the several courts of the  
11 United States or the State of Nebraska, and the legislative history  
12 of any law, rule, or regulation, without making the document  
13 a part of the record. The commission may without inclusion in  
14 the record consider and utilize published treatises, periodicals,  
15 and reference works pertaining to the valuation or assessment of  
16 real or personal property or the meaning of words and phrases  
17 if the document is identified in the commission's rules and  
18 regulations. All other evidence, including records and documents  
19 in the possession of the commission of which it desires to avail  
20 itself, shall be offered and made a part of the record in the case.  
21 No other factual information or evidence other than that set forth  
22 in this section shall be considered in the determination of the  
23 case. Documentary evidence may be received in the form of copies or  
24 excerpts or by incorporation by reference;

25           (4) Every party shall have the right of cross-examination

1 of witnesses who testify and shall have the right to submit  
2 rebuttal evidence;

3 (5) The commission may take notice of judicially  
4 cognizable facts and in addition may take notice of general,  
5 technical, or scientific facts within its specialized knowledge  
6 or statistical information regarding general levels of assessment  
7 within a county or a class or subclass of real property within  
8 a county and measures of central tendency within such county or  
9 classes or subclasses within such county which have been made  
10 known to the commission. Parties shall be notified either before  
11 or during the hearing or by reference in preliminary reports or  
12 otherwise of the material so noticed. They shall be afforded  
13 an opportunity to contest the facts so noticed. The commission  
14 may utilize its experience, technical competence, and specialized  
15 knowledge in the evaluation of the evidence presented to it;

16 (6) Any person testifying under oath at a hearing  
17 who knowingly and intentionally makes a false statement to the  
18 commission or its designee is guilty of perjury. For the purpose of  
19 this section, perjury is a Class I misdemeanor;

20 (7) The commission may determine any question raised in  
21 the proceeding upon which an order, decision, determination, or  
22 action appealed from is based. The commission may consider all  
23 questions necessary to determine taxable value of property as it  
24 hears an appeal or cross appeal;

25 (8) In all appeals, excepting those arising under

1 section 77-1606, if the appellant presents no evidence to show  
2 that the order, decision, determination, or action appealed  
3 from is incorrect, the commission shall deny the appeal. If  
4 the appellant presents any evidence to show that the order,  
5 decision, determination, or action appealed from is incorrect,  
6 such order, decision, determination, or action shall be affirmed  
7 unless evidence is adduced establishing that the order, decision,  
8 determination, or action was unreasonable or arbitrary; The  
9 commission may dismiss an appeal or cross appeal if the  
10 appellant presents no evidence to show that the order, decision,  
11 determination, or action appealed from is without sufficient  
12 basis. The order, decision, determination, or action appealed from  
13 shall be affirmed unless clear and convincing evidence establishes  
14 that the order, decision, determination, or action was without  
15 sufficient basis and, in the case of an appeal of the value of  
16 the property, the greater weight of the evidence establishes a  
17 different taxable value;

18 (9) If the appeal concerns a decision by the county board  
19 of equalization that property is, in whole or in part, exempt from  
20 taxation, the decision to be rendered by the commission shall only  
21 determine the exemption status of the property. The decision shall  
22 not determine the taxable value of the property unless stipulated  
23 by the parties according to subsection (2) of section 77-5017;

24 (10) If the appeal concerns a decision by the county  
25 board of equalization that property owned by the state or a

1 political subdivision is or is not exempt and there has been no  
2 final determination of the value of the property, the decision to  
3 be rendered by the commission shall only determine the exemption  
4 status of the property. The decision shall not determine the  
5 taxable value of the property unless stipulated by the parties  
6 according to subsection (2) of section 77-5017;

7 (11) The costs of any appeal, including the costs of  
8 witnesses, may be taxed by the commission as it deems just, except  
9 costs payable by the appellant pursuant to section 77-1510.01,  
10 unless the appellant is the county assessor or county clerk in  
11 which case the costs shall be paid by the county; and

12 (12) The commission shall deny relief to the appellant or  
13 petitioner in any hearing or proceeding unless a majority of the  
14 commissioners present determine that the relief should be granted.

15 Sec. 2. Original section 77-5016, Revised Statutes  
16 Supplement, 2007, is repealed.